
1990s

The Gavel

1993

1993 Vol. 42 No. 3

Cleveland-Marshall College of Law

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Justice Scalia Visits C-M; Interacts with Students and Faculty

by Jon Sinclair
Staff Editor

U.S. Supreme Court Justice Antonin Scalia engaged a packed auditorium in an interactive and often humorous discussion of constitutional interpretation on Saturday, November 6.

Two prepared speeches were cast aside and replaced with a short discussion of theories of constitutional interpretation, followed by almost an hour of questions from students and others.

Scalia spent seven years in Cleveland as an associate for Jones, Day, Reavis and Pogue.

The early morning talk was largely a debate over two opposing theories of interpretation:

'originalism' versus 'evolutionism'. Scalia is well-known as the Supreme Court's most adamant advocate of 'originalism.'

An originalist believes all constitutional rights or protections are limited by both the particular language of the Constitution and the intent of the drafters. Constitutional rights provided by the drafters are not subject to incremental change by the "hubris of judges," said Scalia. "That's the whole purpose of a constitution or Bill of Rights."

In comparison, a "non-originalist", as termed by Justice Scalia, argues that words in the Constitution should not be restrained by their precise, 18th century meanings.

Scalia humored the audience with his criticism of the 1958 Supreme Court case, Trop v. Dulles, which proposed that the text of the Constitution should "draw its

meaning from the evolving standards of decency that mark the progress of a maturing society."

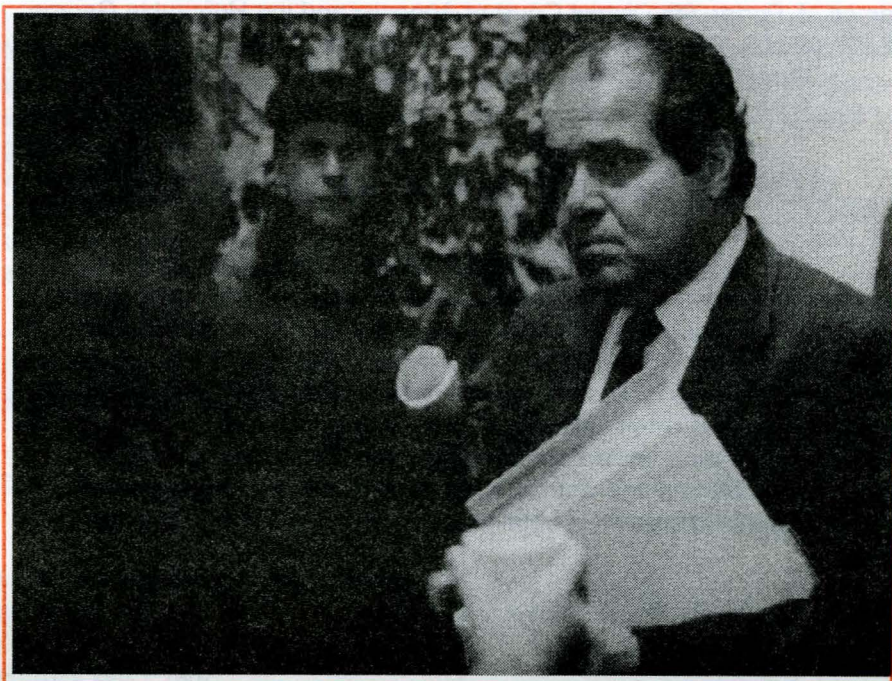
Such a theory assumes justices are sufficiently in touch with society. "Evolving standards of society?" Scalia mused, "I haven't had a beer with the boys in years! What do I know about today's 'evolving standards'?"

Much too often, Scalia said, the Constitution is used to resolve issues that should be addressed by legislation. Too many people believe that issues they care deeply about are provided protection by language in the constitution. "In the past, when something was wrong," said Scalia, "we used to say 'There ought to be a law'. Now people say 'It's unconstitutional'."

Scalia, not known for his congenial debating style, amused the audience with his irreverent treatment of students and faculty members. "Are you finished?" Scalia asked, interrupting a C-M professor mid-sentence. "Good," replied Scalia, before the faculty member could answer.

"It's too bad," said one faculty member after the speech, "He is a brilliant jurist, but the way he interacts with people (and fellow justices) leaves him writing the dissents. He would probably win more concurrences (on the court) if he interacted differently."

Others saw it differently. Said one Cleveland lawyer after the speech, "I think (Scalia) did pretty well (answering questions), considering the audience. It seemed like every question was coming from liberal students and faculty members, not to mention the ACLU."



Justice Scalia speaks with students during the reception following his speech in CSU's Music and Communication Building.

The Rocker Hall of Fame

Only a museum could house all
the accomplishments of
District Court Nominee

by Jon Sinclair
Staff Editor

Imagine the silence of the highest court in America. Walls which magnify the sound of your notes being shuffled on the podium. Now lift your eyes from your notes and find the rapt attention of nine justices, awaiting your presentation.

This scenario was experienced by C-M graduate and Cuyahoga Common Pleas Judge Linda Rocker ('83) when she argued Ohio v. Akron Center for Reproductive Health before the U.S. Supreme Court, six years out of law school. The case challenged an Ohio law requiring parental notification before minors could obtain an abortion.

"Stark terror," replies federal district court nominee Rocker, when asked how she felt when she realized she would be arguing before the Supreme Court. Rocker had won the case in both district court and in the Sixth Circuit.

Lucky for Rocker though, she had plenty of help from the people who taught her law six years earlier. Professors Landsman and Steinglass and others assisted her by sitting as a mock bench while

she rehearsed her argument. The professors, who volunteered their assistance, provided valuable advice and feedback.

Notwithstanding the special assistance she received in 1989, Rocker appreciated C-M's faculty. "They were incredibly accessible," said Rocker. "It is a real tribute to the school."

Rocker's son Adam, who attended Harvard Law School, seemed envious of his mother's experience at Cleveland-Marshall. "He told me to had to fight his way through three secretaries just to see a professor," says Rocker.

Rocker says she originally chose Marshall over Case Western for its diverse student body. "There were so many students of different race, gender, and age; especially second-career students."

Rocker entered C-M at age 40.

Rocker's accomplishments before and after her magna cum laude graduation from C-M are voluminous. Since the late 60's she has helped extend state civil service exam opportunities to black Ohioans, worked to desegregate Moreland School (later becoming

Lessons From a Bookstore

by Robin Wilson
Staff Writer

It was less than a month into the first semester of law school and I was already breaking my noble resolution to not use study aids. I had heard what the professors said during the first week of school about not using them because they are a crutch and I had agreed. But there I was, searching the aisles of Barnes & Nobel Book Store looking for a crutch...looking for something, **anything**, to help me better understand Real Property.

While in the store I met someone who provided the best possible study aid. She is an alumna of Cleveland-Marshall. Her name is Judge Ann Dyke of the 8th District Court of Appeals. Judge Dyke was talking with one of the clerks and when I interjected with a question, she offered to help me. Unknowingly, Judge Dyke provided the best help possible; a truly inspirational story.

Ann Dyke was a registered nurse working for a doctor's office in Cleveland when in 1964 she decided she wanted to go to law

continued on page 6

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Moot Court Night is Big Success

by Kelly Vaughn Rauch
Staff Editor

On November 10, 1993, the Cleveland-Marshall National Moot Court Teams presented their competition arguments concerning toxic torts, federal preemption and medical monitoring at the 25th Annual Moot Court Night. This exhibition served as dress rehearsal for the teams who will be competing in a national competition in Cleveland on November 19 and 20. The competition, sponsored by Case Western Reserve University, will be held at the Justice Center.

Arguing for the Petitioners was Alison Drake and Guy Rutherford; and arguing for the Respondent was Greg Gordillo, John Belt and Richard Zielinski. Serving as the appellate judicial panel was the Honorable John M. Manos, U.S. District Court for Northern District of Ohio; the Honorable James M. Porter, 8th District Court of Appeals; and the Honorable George W. White, U.S. District Court for Northern District of Ohio.

Greg Gordillo was chosen as the best oralist.

JOURNAL OF LAW AND HEALTH

The Journal of Law and Health sends congratulations to these students whose Notes will be published in the upcoming academic year. Volume 7-2 will include a Note written by Jean M. Hillman entitled "Senate Bill 1 - Ohio's Advance Directives Law: Where Have We Been, Where Are We Going?" Future issues will include Notes written by Durin Rogers, Tonda Moore and Grant Yoakum.

There are a limited number of copies available of Volume 7-1 which was published and distributed to subscribers during September. Those students interested in obtaining a copy should stop by the Journal office.



Professor Gregory Mark talks with C-M graduate and new attorney John Cullen during a reception for those who recently passed the bar exam.

Reflections from Reference: A Miscellany of Sources

by Marie Rehmar
Reference Services Librarian

Every now and then, when a certain type of question comes up at the Reference Desk, one starts to think that perhaps there may be more than one person with an interest in finding that type of information. Maybe some of the following sources can help you:

Do you need to check a page reference from a particular edition of Blackstone's Commentaries? The Law Library has a microfiche set of the entire Yale Blackstone Collection.

Are you looking for a Plain Dealer article older than what's available on LEXIS or WESTLAW? Cleveland Public Library has been indexing it since 1976. The Index to Cleveland Newspapers, followed by the Cleveland News Index, and the backrun on microfilm, are available at CPL and the CSU Library in Rhodes Tower. The CSU Library also houses the Cleveland Press Collection, the newspaper clippings files received after that other major daily ceased publication in 1982.

Are you using Ohio Jurisprudence 3rd and finding some citations from the old days that are a complete mystery to you? The Law Library probably does have what you need. First check the abbreviations table so you know what you are looking for, and then do a title search on SCHOLAR, the online catalog. The various sets of old Ohio reports can be found by call number in the old Ohio area on the first floor. (By the way, you may also be able to Shepardize some of these cites in the Ohio Shepard's).

Do you need a reminder about one of the better places to start your research on newly developing areas of the law? It's the ALR Index to Annotations.

Do you want to find the telephone number for Hillary Clinton's office, or any federal agency, or for a particular Congressperson or committee? Try the Federal Yellow Book or Congressional Yellow Book in the Reference Area.

Are you planning to do a lot of Ohio legislative history research? Take a look at A Guide to Legislative History in Ohio in the Reserve Room and also check with a reference librarian about how much less information exists at the state level compared to the federal level. The Law Library does, however, have the microfilm Legislative Service Commission set of bills and bill analyses.

Are you interested in being able to search a general periodicals index not available on LEXIS or WESTLAW? Get a Cleveland Public Library card [or in library talk: become a registered borrower] and increase the search options available to you when you dial in. You can also request materials online from any of the CLEVNET libraries.

If you find that a particular title is not available in our Law Library and you want to check whether the C.W.R.U. or University of Cincinnati law libraries have it, select OhioLink on our network access menu. There also are some periodicals abstracts on OhioLink. This new OhioLink catalog will eventually include 17 Ohio university libraries and the State Library of Ohio. We're scheduled to be added next summer.

CORRECTION

Dean Solomon Oliver received his J.D. from New York University and received a M.A. from Case Western Reserve University. The previous issue of the Gavel incorrectly stated that he obtained his law degree from Case Western.



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Judge Rocker

continued from page 1

the school's PTA president), founded the Zelma George Shelter for Homeless Women and Children, was president of Womenspace (an association of 75 constituent organizations that provide aid to women), was president of Cuyahoga Women's Political Caucus, served as president of the American Jewish Committee, was a trustee of the Cleveland Ballet, and much more.

With such a vast amount of experience, supporters of Rocker give little credence to those who cite her relatively short legal career. Rocker has been a Common Pleas judge since 1990.

"Do I think you need to be on the bench for 20 years before being appointed as a federal judge?" ponders Cleveland attorney Marilyn Tobocman. "No, I don't think so. You need a judge who knows how and is willing to bring a case to trial. (Rocker) works hard, and hears the cases on her docket."

Other supporters praise her judicial temperament and note that history dictates that length of judicial experience should hardly be a top consideration, citing appointments of Supreme Court Justices Warren, Rehnquist, and Thomas.

Furthermore, Rocker is not to be second-guessed by her petite size. Tobocman describes a conference she had with Rocker in which an opposing male attorney was overbearing. "He was essentially saying 'Judge, this is what the law is and therefore this is how this case should proceed'." Tobocman smiled, "She let him know clearly, then and there, who was the judge."

by Robin Wilson
Staff Writer

This November's election was an important one for second year law student Louise Vitale. She was a candidate in the Ward 15 race for Cleveland City Council. Vitale said she'd been thinking about running for the near westside ward for some time because she had just basically had it with her community's lack of representation.

Vitale grew up in Ward 15 near the Zoo and now owns a home in the area. Vitale says many of her neighbors are struggling, working class poor whose needs are being overlooked by a City Council that cares more about building up downtown then taking care of its neighbor-

hoods and its schools. That's why she decided to challenge longterm incumbent and C-M graduate James Rokakis for the Ward 15 seat. Vitale believes its important to work for change in a positive way and that's why she is interested in the political arena. She says its important to speak for those whose voices are not usually heard.

Because she is a relative newcomer to city politics, Vitale didn't have a lot of financial support for this first bid. Because of that, she had to finance her grass roots campaign on a law student's budget. But she did get a lot of help from people in her ward who were also fed up with "the complacency" of politics as usual. Vitale says people called up until the last minute, asking what they could

do to help get her elected. Vitale's campaign was taken door to door, and passed by word of mouth. She was surprised at the amount of support people offered.

Vitale says win or lose her campaign has been a great learning experience. As for her opponent, who's run virtually unopposed for the last 12 years, Vitale says if her candidacy makes him "squirm a little it was worth it" because hopefully it'll make him pay more attention to people in his ward who need help. Win or lose, you can just tell after talking to her that Louise Vitale is committed to improving her community.

(Editor's note: Louise was defeated by incumbent James Rokakis in the November 2 election.)

Important Deadlines!!!

ATTENTION ALL BAR APPLICANTS

Bar Certification Deadlines

1. Supreme Court Application: The absolute deadline for this student registration packet is 6 months before bar exam:

February 1 for July Bar Exam
September 1 for February Bar Exam

2. Bar Exam Application: filed 90 days before the bar exam:

April 1 for July Bar Exam
November 1 for February Bar Exam

Applications are available at the Reception Desk.

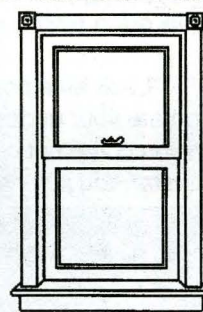
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On Law School at C-M: Frederic White, Jr.

by Andrea Muto
Staff Editor

A few years ago, Professor Frederic White, Jr. showed his grandfather the book he'd written on landlord/tenant law. His grandfather, whose father had been a slave, was overcome with tears and emotion.

That moment was one of the most moving experiences in his life, White said.

At C-M, White's exams also evoke a range of student emotion and reaction.

"Actually, I've lightened up in the past few years," White said. "I'm no less enthusiastic, just a little more mellow."

White, 47, grew up on the southeast side of Cleveland. He attended John Adams High School, then went to New York City to study political science and eventually law at Columbia University. After graduating in 1973, White spent five years at Squire, Sanders & Dempsey.

In 1978, C-M offered him a job teaching Property. In 1993, he's still teaching Property, as well as Estates & Trusts and the Legal Career Opportunities Program. He is also one of two Housing Clinic advisors.

After fifteen years of teaching law, White said law schools may not be serving their students' best interests in an ever-changing, intensely competitive job market facing '90s graduates.

He advocates a rather untraditional approach to law school: After about three semesters of core courses, students would work in "clinical" programs dealing with real cases and clients.

"Law schools are the only major professional schools that throw graduates out with very little practical experience," he said. "Would you go to a dentist who'd only worked on a few mock patients?"

"We need more hands-on interviewing, counseling and negotiating while in school."

White sees a danger in law students trying to squeeze in too many hours clerking while taking a full load of classes.

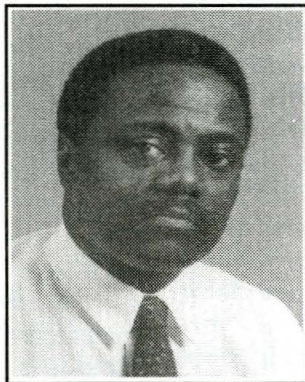
"I worked in law school," he said. "I know clerking may be practical, and I know it may be necessary when you're loaned to the hilt."

"But the danger is, I've had students who flunk out of class because they were working too much and school came second. I've also had students say they've been promised a "space" at a firm while clerking, and then, after they pass the bar, the only "space" they're offered is for rent in part of the office."

White said C-M is destined to remain a

commuter school, a fact that tends to destroy a cohesive "college" atmosphere. However, he said a special graduate dormitory would make life a little easier for some law students.

"Right across the street from here on 18th and Euclid, there's the old Swingo's Hotel,"



Frederic White, Jr.

he said. "Why not convert it into a graduate student residence? Or there's a defunct YWCA around 32nd and Euclid. Why not convert it into dorms with a shuttle and security? Seems to me a better idea than a Convocation Center."

On C-M's minority representation, White said the school had begun recruiting efforts long before it became "fashionable," and continues to seek out qualified candidates.

"The minority population, however defined, is about 10 percent of the student population," he said. "But there's always room for the numbers to go up. I'm generally satisfied with the job we're doing."

White said all students will confront a more competitive job market than the one he entered after graduating from law school in 1973.

But he cautioned that a C-M graduates must not sell themselves short, nor feel especially threatened by Case Western Law School graduates.

"There are judges in state and federal court, and numerous partners around the country who are C-M graduates," he said.

All law students will feel pressure from the nine graduating classes from nine Ohio law schools entering the work force each year.

"We have more law schools in Ohio per capita than any state," White said. "And we're in a region losing population. New lawyers will have to carve out a niche, perhaps find a specialization."

"Look for a non-traditional field; or try to incorporate your undergraduate education with law. When you come out of law school, the world is still your oyster. You just have to find the right beach."

Visiting Russian Professors Await the Birth of a New Constitution

by Jon Sinclair
Staff Editor

If you've recently tried to draw or sketch, you've probably been rudely reminded of your skills. One look at your pile of crumpled attempts, and you remember it's not as easy as you think.

Similarly, the former Soviet Union has been almost as successful when it comes to sketching constitutions. In this century the former Soviet Union has had almost as many constitutions as it has had leaders.

The subject of constitutions was an often-discussed topic for C-M visit Professors Alexei Korolev and Valeri Musin. They spoke to students during October as part of a faculty and student exchange program with the St. Petersburg Faculty of Law.

While the United States has been satisfied with its first constitution, Russia has witnessed drafting attempts in 1918, 1922, 1936, 1977, 1992, and 1993. The most recent one had over 200 amendments, and received new amendments by the week, said Professor Korolev.

The 1992 constitution was cast aside this past October. Yeltsin has pledged to introduce a new constitution for referendum by December of this year.

"Russian leaders," said Professor Korolev, "need to abandon the idea that every new leader needs his own constitution." Not only does each leader feel the need for his own version, but they also have a habit of promising freedoms on paper, while suppressing them in reality.

Will Yeltsin unveil a constitution which provides freedoms similar to those found in Western constitutions, and provide minimal powers for the president? "I hesitate to conclude one way or the other," answers Professor Korolev, "but I doubt he will pass on such an opportunity to insure his own powers."

Not all Russian citizens are as skeptical of Yeltsin. "He might provide himself with extra powers, temporarily, for emergency situations which can be expected," says Victoria Terekhova, a native of Odessa who is studying at Case Western, "but I am confident that in the long run he will provide for a fair constitution."

Americans will have to wait and see. The United State and other countries have more than a passing interest in the matter.

"It is very important that the former Soviet Union develop into a stable society," says Professor Arthur Landever. "We must remember there are thousands of nuclear missiles over there, and it is in our interest that they stay on the ground."



photo by Steve Zorc

These graduates have a reason to smile! The new lawyers are celebrating in the atrium on October 29, 1993, with Alumni Director Mary McKenna (far right) because they passed the July 1993 Ohio Bar Exam. Way to go!

Nicaraguan Dean Visits C-M

by Andrea Muto
Staff Editor

Law school tuition in Leon, Nicaragua costs about \$40 U.S. dollars a year.

But the value of legal services new lawyers will provide that country is immeasurable, said Dean Xiomara Paguaga of the National Autonomous University of Nicaragua.

"The economic situation is very bad in Nicaragua," Paguaga said through a translator. "Unemployment is close to 70 percent; the government has reduced public spending. Also, stability within the government is a problem.

"Law students will be able to contribute to Nicaragua's future and stability...We need to establish strong relations with U.S. universities to share resources and experiences, especially in the field of mediation."

Last month, Paguaga visited C-M classes and faculty to exchange ideas concerning law school education. Paguaga, 49, was the first woman to serve as the dean of a law school in Nicaragua. Since 1990, she has also been an associate judge of the Nicaraguan Supreme Court of Justice.

Professor Patricia McCoy accompanied Paguaga during most of her visit here. McCoy said that the two universities may eventually design an exchange program for faculty and students through which C-M students would spend a summer in Leon teaching English and taking law classes.

Paguaga said infighting among the various political parties has slowed reform necessary to fuel Nicaragua's economic growth. She said President Violetta Chamorro has tried to appease two major political opponents, the Sandinistas and the UNO party, with numerous concessions. As a result, General Manuel Ortega remains in charge of the military, whereas

the UNO party wanted the Sandinistas completely excluded from the government.

"Chamorro is feeling much pressure from both sides," Paguaga said. "This is still a very delicate situation."

Paguaga said mediation could help remedy Nicaragua's internal turmoil.

"Mediation doesn't exist now," she said. "That is why I feel it is important to build strong relations between the U.S. and Nicaraguan [students and professors] to assist in the development of mediation practices."

Paguaga said the Nicaraguan courts have recently been inundated with cases concerning property rights.

She said hundreds of people fled Nicaragua during the 1980's, when the Sandinistas and Contras were embroiled in civil war. Now, many people have returned to claim their land and

possessions, and the courts have become overburdened with that litigation.

Paguaga said Nicaraguan law students typically spend five years after high school studying law. Students are required to pursue actual "field experience" in which they try cases under the supervision of a professor.

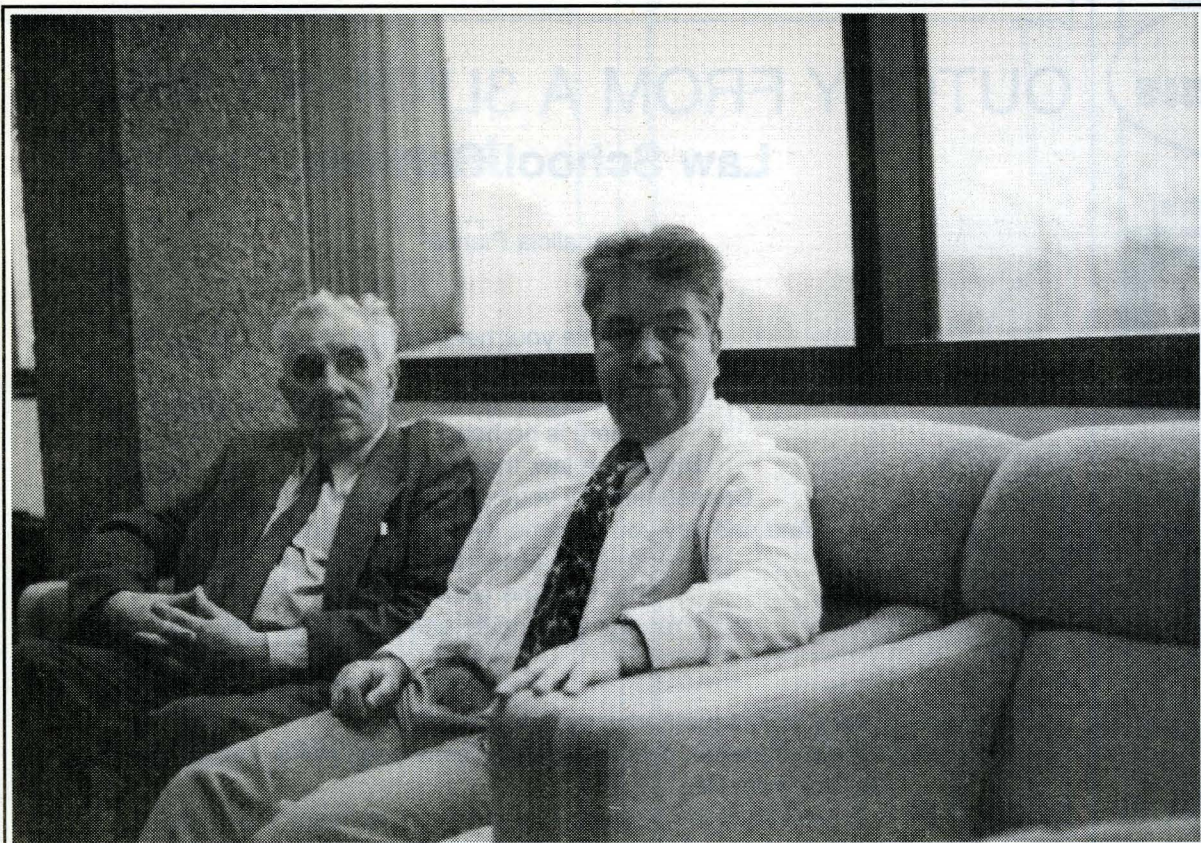
Paguaga said the law school usually receives more than 500 applications each year; 100 students are accepted. Women comprised nearly half of that number this year.

"When I studied law, there were only three women of 20 in my class," she said. "There is still discrimination, but little by little women have shown they can do the job."

During Paguaga's visit, C-M students Eladio A. Torres, Yamile Benitez, Miriam Ocasio, Rene DeLeon-Toro and Keila Cosme assisted with translation.



From left: Professors Tayyab Mahmud, Earl Curry, Dean Xiomara Paguaga, Assistant Dean Solomon Oliver, and Professors Patricia McCoy and Jane Picker.



Professors Alexei Korolev (left) and Valeri Musin, from the St. Petersburg Faculty of Law, spoke with students in the faculty lounge during their visit to C-M in October.

Happy
Thanksgiving!

Last day of class
is Thursday,
December 9, 1993!

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luck on
exams!

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Serrano, Mirasol, Banana-Yellow Wax

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2000

Cascabel, Sandia, Ancho, Pasilla

GARLIC...
A buttery blend of parsley and parmesian

500

Argo, Lady Bell, Soy, Sweet Banana

TERIYAKI...
A Oriental sensation sure to please

250

Sweet Bell, Pimento, Golden Boy

HAWAIIAN...
A sweet and sour taste treat from the islands

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The incendiary properties of chile peppers can be scientifically rated by measuring the amount of capsaicin (the heat producing property) in each chile pepper. This is accomplished by using a standard called a Scoville unit. A Scoville unit is the number of units of water it takes to make a unit of chile pepper lose all traces of heat. For example it takes between 2,500 and 5,000 units of water to neutralize the heat from one unit of jalapeno.

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Lessons

continued from page 1

school. She had become frustrated over the lack of employment rights and bargaining power of nurses in the 1960s. She was told upon inquiry that Cleveland-Marshall had never had a nurse admitted to the law school. She became the first one. That was not the last of her many firsts.

Dyke was one of six women in an entering class of 300 and a graduating class of 150. She remembers a professor, who is no longer with the College, telling her in class that "women shouldn't be in law school. They should be at home on the phone and changing diapers." That did not dissuade Dyke from her goals. She was secretary of her class and an editor of law review while working full-time as a nurse and attending law school at night.

When Dyke graduated from Cleveland-Marshall in 1968 she became one of only eight nurse-lawyers in the country. She later opened the first all-women's law firm in Ohio along with two fellow Cleveland Marshall alumni, Donna Catliota and Dorothy S. Gamiere. Dyke later went on to become the first nurse-judge in the country. When Judge Dyke

first ran for the common pleas bench in 1980 a male columnist in the Cleveland Press newspaper wrote: "Since when does nursing have anything to do with the judicial system? What does Dyke want us to believe, that she'll administer artificial respiration to a faint swooning juror? Or take lawyers' temperatures?" Nurses and Cleveland women who were outraged over the tone of the article united and helped elect Dyke by 34,000 votes. It was a surprising victory because she ran as a Democrat in a Republican county against a widely known suburban mayor who had all the major endorsements. In 1986, she won a seat on the Eighth District Court of Appeals where she is now the presiding judge.

Judge Dyke has been quoted as saying "I have never been deterred by the understanding that few achieve all their goals; instead I have been inspired by the belief that no one succeeds who doesn't try." That's the lesson that has come out of meeting Judge Dyke in the bookstore; if Judge Dyke can accomplish all that she has accomplished, surely, I can master Real Property.

Make a statement....

Write for the GAVEL

The GAVEL is always seeking interested students, staff, faculty and administrators to contribute to this publication. If you are interested, stop by the office, LB 23, or call 687-4533. Opinion pieces are welcome along with news articles. Please contact an editor regarding your topic to avoid duplication of efforts.

Reporters, photographers, editorialists and cartoonists are needed. Contributors become staff members after publishing two articles in the GAVEL. Staff members are eligible to participate in editor elections at the end of the school year. Three editors are elected, each receiving a full tuition stipend from the University.

The opinions expressed herein are those of the authors and not the GAVEL. The GAVEL is not responsible for article content, including factual errors.

The next issue of the GAVEL will be published in Spring Semester. Deadlines will be posted.

OUTCRY FROM A 3L

Law School Genesis

by Analicia Pianca

They' take your heart out
throw it on the ground
and stomp on it.
There is no heart.
That is the law, they declare.
Consequently you become hollow.
And one day you become everything you hate.
You act arrogantly.
You become elitist.
You act with indifference.

I define "they" as the methodology of teaching law.

"They" is the Langdellian pseudo-scientific case book study method that divorces the law from life.

"They" is the abuse of the Socratic system which demeans the student.

"They" is the hierarchical competitive law school environment which moves from a cooperative to a co-opted education.

"They" is ultimately the law professors themselves who think themselves gods and become effectively unapproachable by students -- away from a collegial environment in which the true spirit of learning occurs.

Asphalt Company Attempts to Pave Over First Amendment Rights

by Les E. Rockmael
Staff Writer

Currently being played out in the Cuyahoga County Common Pleas Court is a lawsuit with constitutional law implications. The issue at the heart of the lawsuit deals with free speech becoming defamation. The G.R. Osterland Company, a division of Cuyahoga Road Products, Inc., has sued seven members of the North Tremont Coalition for slander, libel and malice. One of the seven defendants is Cleveland-Marshall Law School student Kathleen E. Webber.

The suit was filed by Cleveland attorney Robert W. McIntyre of McIntyre, Kahn & Kruse. During a phone interview with Mr. McIntyre, he stated that the suit was filed in response to alleged false remarks linking health problems of members of the community and the plant in letters prepared by the defendants which were sent to local residents and government officials. Mr. McIntyre further alleges that the information in the letters was known by the defendants to be false. Mr. McIntyre alleges that the letters resulted in impairment of plant operations and lost business opportunities. He further alleges that community protests have cost the company an amount in the six figure range.

One of the major bones of contention between the defendants and the asphalt company is statements in the letters sent to government officials blaming the company for damage to the I-71 bridge.

Ms. Webber claimed that this information was told to residents by an employee of the Ohio Department of Transportation (ODOT). It is alleged that aggregate stored under the bridge by the company has caused the bridge to shift, resulting in a bill to the taxpayers of \$7 million. This information was also reported in the May 8, 1993, edition of the Plain Dealer. In this article ODOT confirms that the company is partially responsible for the bridge shifting due to the storage of aggregate piles near the bridge supports. The Plain Dealer was not named a

party to the suit. Mr. McIntyre further stated that "every time the company applies for renewal of a permit, the defendants and other members of the community have attempted to thwart the granting of the permits." Mr. McIntyre believes that the residents are attempting to force the plant to relocate so that developers could then come in and develop the area and increase property values in that area.

Ms. Webber denies that the community is deliberately trying to chase out the plant in order to further development of the Tremont area. Ms. Webber said, "Asphalt stinks. The company and the State EPA promised us that we would not even notice the existence of an asphalt plant. Over the past six years, the stench, dust and noise have made us miserable."

"We followed normal, reasonable channels by contacting our elected public officials voicing our concerns," Ms. Webber said. "I am being sued for \$750,000 for writing letters to the Mayor and the Governor. Another neighbor has been sued for testifying at a public hearing. These lawsuits chill political discussion and will make all citizens think twice before participating in government or community development."

Area politicians have recommended the city approve a capital budgeting plan in order to

help find the plant a new home. But, according to Mr. McIntyre, the owners of the plant have no intention to relocate the plant at the present time. At an October 29, 1993, press conference, Councilman Gary Paulenske was joined by Council President Jay Westbrook, in expressing outrage at the lawsuits filed by the company.

The Ohio American Civil Liberties Union is also getting involved in this action. While taking no position on the merits of the case, the ACLU is filing a "Friend of the Court" brief. Kevin O'Neill, the State Director for the ACLU, stated that the ACLU does consider this lawsuit to be a SLAPP suit. SLAPP stands for Strategic Lawsuits Against Public Participation.

Mr. O'Neill said these type of suits inhibit free speech by forcing the defendant into exorbitant legal costs. Mr. O'Neill further stated that the Ohio ACLU is urging the court to adopt the Colorado Supreme Court standard of shifting the burden of proof to the plaintiffs in SLAPP lawsuits.

Mr. O'Neill also said that the Colorado standard allows for expedited discovery and an expedited trial date to try to reduce the legal costs that defendants would normally face. Defendants have filed a leave to plead and their individual Answers to the Complaint are due November 22, 1993.

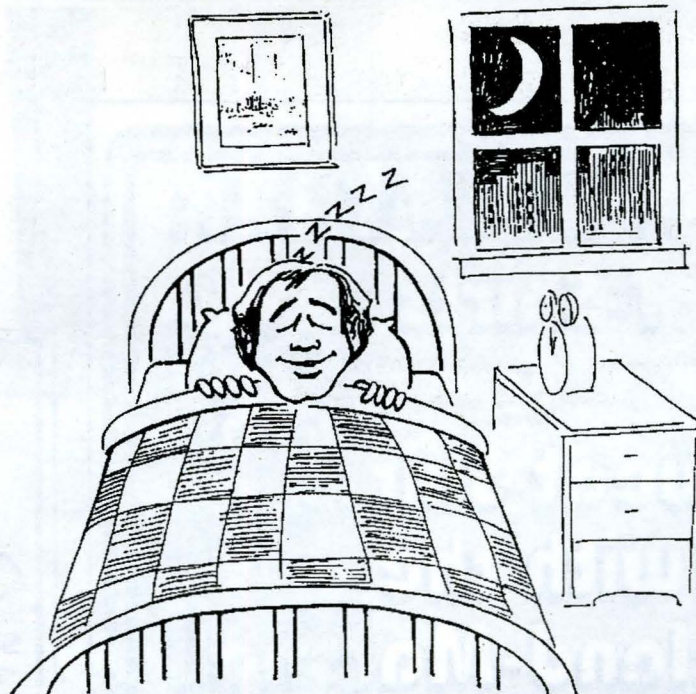
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SMH BAR REVIEW

What SMH students do the night
before the bar exam.....



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Professor Happenings

DAVID BARNHIZER (Environmental Law, Jurisprudence, Lawyer's Strategies). Published an article in the Journal of College and University Law (1993) entitled "Freedom to do What? Academic Freedom and Academic License." President of the Board of Trustees of the Fairmount Center for Creative and Performing Arts since 1991.

THOMAS BUCKLEY (Commercial Law, Bankruptcy, Secured Transactions). Spoke on bankruptcy as a panelist at the Forest Weinberg Memorial Lecture.

DENA DAVIS (Church and State, Torts). Was invited to join a working group on "Religion and the Professions" at the Pynter Center for the Study of Ethics and American Institutions at Indiana University.

ELISABETH DREYFUSS, PAMELA DAIKER MIDDAGH, ARTEMUS CARTER (Street Law Program). Joined forces with Capital University's Street Law Program to develop skills in law relation education and mediation among law students, teachers and Columbus middle school students and teachers.

JOEL FINER (Criminal Law and Criminal Procedure, Social Science and Law). Served on the Academy of Medicine's Planning Committee for its upcoming fall program on Physician-Assisted Suicide.

SCOTT FINET (Law Library). Presented a paper "The Impact of Full-Text Online Legal Databases on Academic Law Library Usage: A Preliminary Assessment" at the 14th Annual Online Meeting. He also presented a paper at the Central European Conference and Exhibition for Academic Libraries and Informatics in Vilnius, Lithuania.

JAMES FLAHERTY (Family Law, Estates & Trusts, Legal Ethics). Was appointed to the Planning and Administration of Small Estate Trusts Committee and the Professional Responsibilities and Liabilities of the Estate Lawyer Committee of the ABA Property, Probate and Trust Section.

DAVID FORTE (Constitutional Law, Comparative Law, Jurisprudence). Presented a paper "The Spontaneous Order of the New World System" to the International Studies Association in Acapulco, Mexico. Addressed the Cleveland City Club Round Table on "War Crimes in the Former Yugoslavia." Delivered six lectures at the Salvatori Center for Academic Leadership, Heritage Foundation in Washington, D.C.

DEBORAH GEIER (Tax, Federal Indian Law). Presented a paper "Tax Issues Affecting the Family" at the ABA Section Meeting. She also serves as chair of the Subcommittee on Current Developments and Publications, the committee on Individual Investments and Workouts, and the ABA Section of Taxation.

LOUIS GENEVA (Tax, Estate Planning). Coordinated the 4th annual IRS Cleveland District Director's Federal Wealth Transfer Conference. Presented a paper there entitled "Federal Estate Tax Impact of New Ohio Revised Code Section 1340.22 with a View to Discussing Private Letter Ruling 9235025 and the Case of Joseph A. Vak v. Commissioner."

JACK GUTTENBURG (Externships, Trial Advocacy, Pretrial Practice). Participated in a continuing legal education program on Trial Advocacy for Legal Services Corp. in Columbus.

DENNIS KEATING (Housing Law, Urban Affairs). Presented "Urban Policy" at a joint symposium with Brown University and the University of Rhode Island; "Redevelopment of Distressed" at the 1993 Urban Affairs Association Conference; and "Status and Legality of Pro-Integrative Housing Programs" at the law school's Faculty Luncheon Seminar Series.

STEPHAN LANDSMAN (Evidence, Justice Theory). Presented "The Adversary System in America" at Chuo University in Tokyo, Japan.

TAYYAB MAHMUD (Contracts, International Law, Torts). Published an article "Praetorianism and Common Law in Post-Colonial Setting: Judicial

Responses to Constitutional Breakdown in Pakistan" in the 1993 (1) Utah Law Review.

GREGORY MARK (Corporations). Served as consultant for the Office of Independent Counsel and Department of Justice regarding Iran/Contra.

PATRICIA MCCOY (Banking Regulation, Securities). Spoke on "The Future of Banking" at the Cleveland Bar Association Business Section. She also sang with the Cleveland Orchestra Chorus in performances at Severance Hall, Blossom Music Center and the Chautauqua Institution in New York.

LIZABETH MOODY (Business Associations, Securities). Returned to teaching law after serving as president and executive director of Law School Admission Services for two years.

SOLOMON OLIVER JR. (Civil Procedure, Trial Advocacy). Spoke at Alexander Graham Bell Elementary School's career day and at a civil rights workshop at Eastwood Day Treatment Center. Was a panelist at the U.S. Department of Justice's Ethics Seminar for Prosecutors.

STEVEN SMITH (Dean, Law and Medicine). Chaired a continuing legal education program on health law sponsored by the CSU Law Alumni Association.

VICTOR STREIB (Criminal Law and Criminal Procedure, Juvenile Law). Argued Allen v. Florida before the Florida Supreme Court concerning the constitutionality of the death penalty for 15-year-olds.

JANICE TORAN (Civil Procedure, Freedom of Information Act). Appointed chair-elect for the Association of American Law Schools Civil Procedure Section.

ALAN WEINSTEIN (Environmental Law, Land Use Planning). Editor of the newsletter of Planning and Law Division for the American Planning Association. Presented a paper on "Land Use and the First Amendment" at the National Conference in Chicago.

JAMES WILSON (Constitutional Law, Administrative Law). Spoke on "Public Opinion and Constitutional Interpretation" at a faculty seminar at C-M.

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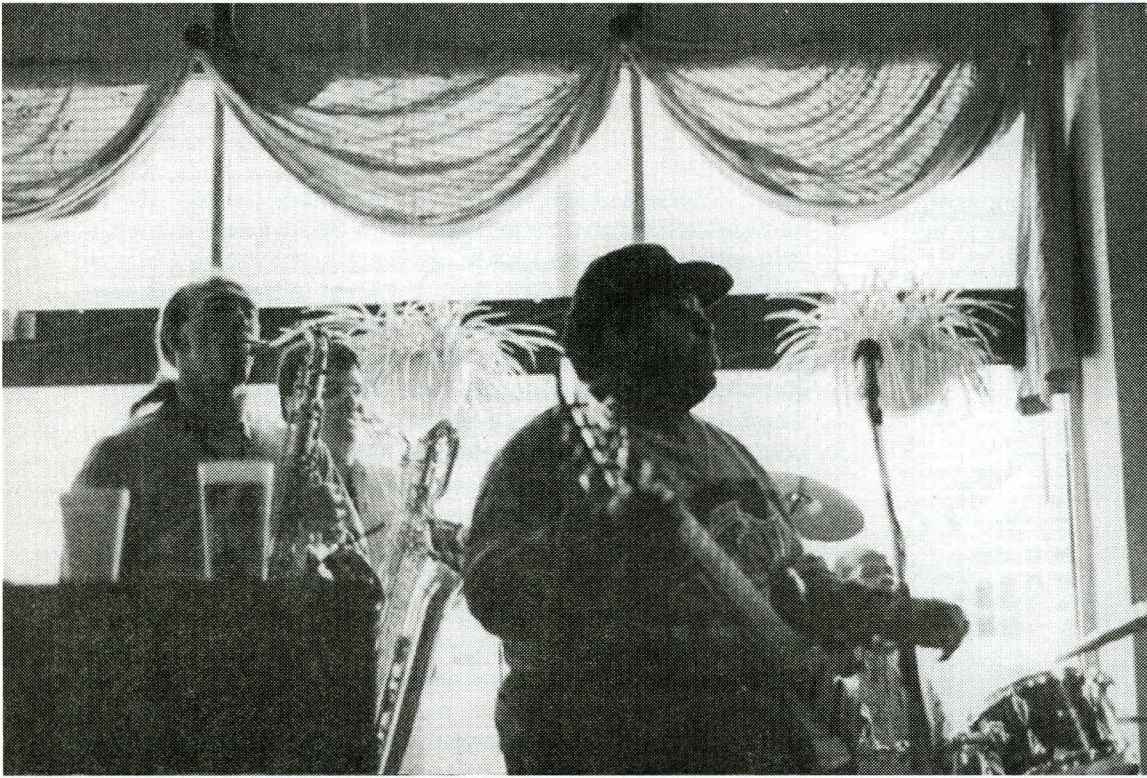
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Deadline
All entry forms and essays must be received by the OSBA no later than Dec. 31, 1993. Winning essays will be chosen in January 1994 and will be published in *Associate News* and may be published in an issue of *Ohio Lawyer*.

How to Enter
Write the OSBA at P.O. Box 16562, Columbus, OH 43216-6562, or call 800/282-6556, for an official entry form and contest details.



C-M student Bruce Hodge (right) plays with his band, East Side Blues Band, at the SBA function in the Brewed Awakenings coffeeshop on October 29, 1993. One of the saxophone players and the lead singer in the band are practicing attorneys. Who said the economy is bad?!

Staff Member honored for Distinguished Service

Marie Rehmar, Reference Services Librarian, was one of the first recipients of Cleveland State University's Distinguished Service Award.

She received a plaque of recognition and \$1,000. Marie has been a member of the law library staff since 1978.

Congratulations, Marie!

Volunteer Income Tax Assistance

Students can gain valuable experience by helping those less fortunate than them complete their income tax forms by participating in the Volunteer Income Tax Assistance (VITA) program. IRS training sessions will be held in January and February, and the program will run from February 15 - April 15.

Contact Jon Good (656-4332) or Karen Salvatore (ABA Office - room 26) for more information.

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Student Advocates for Housing Rights

by Victoria Terekhova

Cleveland-Marshall's Housing Law Clinic has been offered by the law school since 1990. The class is a joint program of Cleveland-Marshall and the Housing Advocates, Inc. to assist third year law students in acquiring practical experience while serving low income clients. During its three years of existence the Housing Law Clinic has provided legal assistance and counseling to over 1500 families. This year the Legal Services Corporation awarded a \$98,150 grant to the Clinic that will permit it to serve an additional 600 families.

The Housing Advocates, Inc. is a non-profit public interest law firm that has been providing legal assistance and counseling to Cleveland city residents since 1975. The primary objective of the firm is to prevent low income tenants facing evictions or foreclosures from becoming homeless, and to promote safe and affordable housing for low and moderate income families.

A third year student wishing to participate in the class must obtain written permission from either Prof. Stephen Lazarus or Prof. Frederic White and obtain a certificate from the Ohio Supreme Court. Upon acquiring the certificate, a student acquires the status of legal intern and is permitted to represent clients in court under the supervision of a Law Clinic attorney. A supervising attorney is appointed to each intern at the beginning of the semester to help with cases, clients, and other assignments. The program is managed and supervised by Housing Advocates, Inc. staff attorneys, Edward Kramer, Marilyn Tobocman, Kermit Lind, Tim Obringer and Sheila O'Donnell, along with Prof. Lazarus and Prof. White.

Angela Thiel was one of the two Clinic students assigned to prepare an amicus curiae brief in the Eighth District Court of Appeals in the case of Renita Jackson, et al. vs. The Glidden Company, et al. Renita Jackson and her children are among many other plaintiffs who are suffering from the lead-based paint poisoning in Cleveland. The family lived in a house built prior to 1960, when heavily lead-based paint was used for home painting.

Poisoning occurs from paint chips, particles or dust containing lead, which causes permanent damage to the human body. Cleveland ranks fourth among U.S. cities in the number of children suffering from lead poisoning. However, few suits of lead poisoning have been filed due to the impoverishment of

the victims and their ignorance of legal rights.

Angela Thiel was surprised by the amount of work related to the case, but she is satisfied with the results. She felt honored to help draft and sign the brief that might effect the lives of thousands of people. Thiel believes that the Clinic gives law students an exceptional chance to do everything related to their future profession: prepare complaints, draft discovery material, write briefs, work with clients and even represent them in Court. "The Clinic gives you a taste of real life," says Angela, "and if you make a mistake, you would rather make it here under the attorney's supervision, than later on your own."

Renee Heller is a fourth-year part-time student who was also preparing an amicus curiae brief. Currently she is working on a fair housing lawsuit that involves the Cuyahoga Metropolitan Housing Authority (CMHA), and Mr. Humphries, a mentally handicapped tenant residing in one of their housing estates. As grounds for eviction, CMHA accused Mr. Humphries of violating his lease. The Clinic defended Mr. Humphries, arguing that CMHA failed to provide reasonable accommodation for his handicapped condition. With the help of the Clinic, the court ruled that Mr. Humphries could remain on the premises.

Renee emphasizes the importance of the support that she received from her supervising attorney throughout the process: "Mr. Kramer was there for me any time it was needed, and even stayed as late as 11 p.m. to assist me the night before the hearing." Overall, the Clinic encourages cooperation from other interns and the staff attorneys.

Heller believes that the Housing Law Clinic not only assists students in acquiring a valuable experience, but also helps to increase public awareness of legal rights. Renee learned that many tenants are unaware, for example, that landlords have no right to change the lock on the door or shut off the electricity, even when a person has not paid his/her rent.

Currently, there are seven third-year law students from Cleveland-Marshall who are working at the Clinic. If you are looking for a challenge and a chance to apply the theories you have learned for the benefit of a real client, sign up for the Housing Clinic class. Students who have already registered for classes can still enroll in the Clinic. Direct your inquiries to either Professor Lazarus or Professor White.

STREET LAW UPDATE

Instead of just learning the law this semester, law students are teaching it through C-M's Street Law Program. **Will Schill** and **David Leitch** are teaching at Parma Christian and St. Edward's schools; **Anil Anthony**, **Victoria Cardaman**, **Joe Jacobs**, **Peter Flanigan** and **Denise Wimbiscus** are all teaching in Cleveland Public School classrooms. **Renee Bacchus**, **Suzanne Conroy**, **Peter Gagnier**, **Laura Gold**, **Scott Lawson** and **Ruby Weems** are bringing law-related education to Warrensville Heights, Westlake, Painesville, Mayfield, Rocky River and East Cleveland.

Special plans for this year's law students include working to develop an Ohio Street Law text, creating a Refugee and Asylum curriculum for Cuyahoga County Board of Education's Gifted and Talented Program, including middle school classrooms in the Street Law Program and to advance Afrocentric and multi-cultural curriculum through the use of oral history.

The Street Law Program has also welcomed visitors from Cameroon, Senegal, Ethiopia and Central America to study how the program has worked with Cleveland's urban problems. Elisabeth Dreyfuss, program director, said that at this point in Cleveland's history, the city has moved from problems to solutions. She said what was learned here can work in other countries, especially those struggling to set up democracies.

The Street Law staff also helps schools set up student sponsored conflict resolution programs. If you see youngsters in the Moot Court Room, they are likely to be from Brooklyn, Ohio schools or Vermillion, Euclid or Cleveland Public schools.

The program has been selected by the national Institute for Dispute Resolution as one of three sites nationally to pilot a conflict resolution curriculum entitled "We Can Work It Out." Middle school teachers from twelve Cleveland schools will participate in this project. **First year students** are encouraged to volunteer to work with these teachers.

For more information about Street Law call Professor Dreyfuss, Artemus Carter or Pam Daiker-Middaugh at 687-6878.

Judicial Externship

by Brian Moriarty

I completed my judicial externship with Judge David T. Matia of the 8th District Court of Appeals. My duties consisted of reading opposing counsel's briefs and writing brief memos stating the facts, issues and what I believed to be the outcome of the case. With the 25-30 hours per week required for the externship, I was exposed to a wide range of topics. During this time, I also developed a personal relationship with the Judge and the law clerks, while at the same time, gaining a perspective of the legal system that cannot be learned from a book.

I highly recommend this program to any second or third year student because it is an opportunity that should not be passed up.

Clerkships and Externships Offered at C-M

1. Environmental Law Clinic
2. U.S. Attorney General Externship
3. Housing Law Clinic
4. Fair Employment Clinic
5. Judicial Externship
6. Law and Public Policy Clinic
7. Street Law
8. Independent Externship
9. Federal Public Defender Externship

Moot Court:

Hard Work, but Worth the Effort

by Alison Drake
Chairperson, Moot Court Board of Governors

The Moot Court program at Cleveland-Marshall offers an exciting opportunity for students to hone their brief writing and oral advocacy skills in the area of appellate practice. As is evident from the numerous trophies in the atrium, this program has a long-standing tradition of excellence. Under the advisement of Professor Stephen Werber, the Moot Court program has gained a great deal of respect throughout the Cleveland legal community.

Moot Court participates in five to six competitions each academic year. Teams of two or three persons compete around the country in competitions involving Constitutional law, evidence and tort law, for example. Usually, individuals compete once each academic year; however, changes in team composition or additional competitions may provide opportunities for additional experience.

First year students may, through the legal writing program, earn a spot on the Moot Court team for the following year. At the close of the first year, students write briefs and participate in oral arguments as part of the legal writing curriculum. Legal writing instructors select the top briefs from their sections to compete for a chance to participate in Moot Court during students' second academic year. This group of pre-selected briefs is narrowed to sixteen. The writers of these briefs are then scheduled to argue on and off brief ("on brief" is arguing your side and "off brief" is arguing the opponent's side) to complete the competition. Based on the combined brief and oral scores, three to six students are extended offers to compete in interscholastic competi-

tion the following year.

Second year students may compete for a place on the Moot Court team through Advanced Brief Writing. The process is similar to the one followed by the first year Legal Writing program. The main difference is that students in Advanced Brief Writing work in teams on their briefs and in oral argument. This aspect is more akin to the process followed in actual interscholastic competitions. Approximately fifteen students are extended offers to participate in Moot Court during their third year of law school.

The time commitment for Moot Court is substantial. Long, often tedious, hours of preparation go into researching and drafting a competitive brief. The practice time for oral arguments is no less demanding, although by the time a team is ready to begin oral argument, much of the groundwork has been laid.

Third year students on Moot Court have greater time commitments than second year students. This is because third years comprise the Moot Court Board of Governors, the governing arm of the program. The additional time demands arise in the form of administrative hours. Administrative hours include time devoted to fundraising, activity planning and other activities necessary to the smooth functioning of the program.

While these time commitments may seem daunting at first blush, this experience is probably one of the most practical experiences that can be gained in law school. The time, therefore, is very well-spent.

Anyone who would like further information regarding any aspect of the Moot Court program may contact any member or Professor Werber. The Moot Court offices are located near the Law Review in rooms 17, 18 and 19. Please feel free to stop by anytime.

MOOT COURT ANNOUNCEMENTS

Kevin Kinnear won the Bar/Bri Bar Review Course which was the prize in the Moot Court Raffle.

Benton Moot Court Competition

The Twelfth Annual John Marshall National Moot Court Competition was held on October 28-30, 1993. The competition is sponsored each year by the John Marshall Law School Center for Information and Privacy Law in Chicago and is one of the country's largest and most successful Moot Court Competitions.

The competition addresses questions posed by technological developments in information science and personal privacy. Twenty-nine law schools from across the country competed in this year's competition. Cleveland-Marshall College of Law was represented by Moot Court Team members Jennifer Kriausky, Dee O'Hair and Terri Richards.

National prominent attorneys, law professors, and state and federal judges presided over the competition. Cleveland-Marshall advanced through the pack of law schools to emerge as one of the eight finalist teams. In the quarter finals, C-M bowed to Villanova University, this year's first place team.

OPINION

Beavis & Butthead say: Censorship Sucks!

by Les E. Rockmael
Staff Writer

Item: A two-year-old Ohio girl dies tragically in a fire set by her five-year-old brother. The culprit: Beavis & Butthead.

Item: A 19 year old in Pennsylvania is killed and several friends are critically injured while laying down in the middle of the highway. The culprit: a movie titled The Program.

Item: Several teenage girls in Texas take hair spray cans and lighters and combine the two to ignite large streams of fire resulting in burn injuries. The culprit: Beavis & Butthead.

After these incidents took place a cry arose throughout the land, television and movies are to blame for these incidents and others. I say it is time for parents to stop passing the blame and calling for censorship of what we see and hear. It is a parent's responsibility to raise their own children properly so that a child would never consider taking the type of actions that lead to such tragic consequences.

Any loss of life is indeed tragic, but one has to look beyond the headline to get to the heart of the matter. In the case of the deceased Ohio girl, the mother claims that her five-year-old son set the fire after developing a fire fixation from watching Beavis & Butthead.

Well, if the mother knew her son was a potential pyromaniac, she should have not let her son watch a show where fire is considered cool and, at the very least, should have set her son down and explained that it is not cool to set fires. So now the mother decides to sue MTV and a cry goes up to either take it off the air or change the content and move it to a later viewing time.

Overlooked in all this was the fact that the mother had left her five-year-old alone unsupervised with his two-year-old sister and it was the mother's cigarette lighter that the child got a hold of to set the tragic fire. Sorry, Mom, you deserve the blame on this one.

The death of the Pennsylvania man is an even more absurd example of misplaced blame. In this situation a 19-year-old and some of his 17- & 18-year-old friends lay themselves down in the middle of a well-traveled highway and were going to let the cars on the road pass over them as some sort of macho test of nerves. When the 19-year-old died his mother placed the blame on the movie The Program where a scene identical to the actions taken by these young men was portrayed. The mother claimed her son may have been mischie-

vous at times but had never done anything stupid in his life. Well, if you ask me, a 19-year-old laying down in the middle of a highway is pretty stupid. Tragically, the film studio that made The Program pulled the "influential" scene from the film. Later, it came to light that this type of activity had been taking place in this Pennsylvania town for the previous two years. It appears that the kids in this town could find no other way to enjoy a Saturday night.

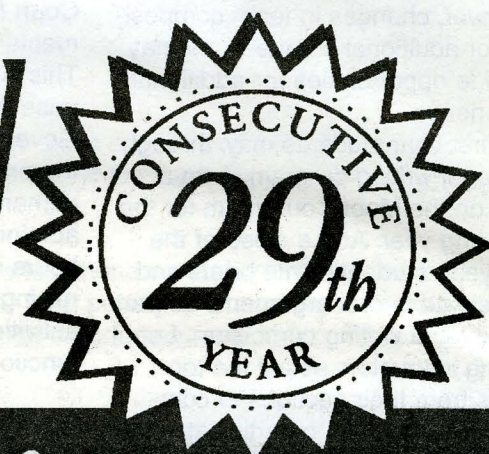
Calls for censorship and regulation of music, television and movies is nothing new. Every few years the Senate holds hearings saying something should be done about all this bad stuff these mediums do to harm the children of America. Scores of experts and indignant parents' groups appear blaming the moral decay of our society on what our children read, listen to and watch. This week before the most recent hearings into T.V. violence, Attorney General Reno made the statement that if something is not done fast then the Government will make it happen. Never mind that there is this little piece of paper called the Constitution standing in her way. In a few weeks the cry will die down and when it is approaching election time again, you can bet another uproar will be raised.

Blame is being pointed in the wrong direction. It is time for the parents of our children to take a look in the mirror at their own reflections. What is out there today is no worse than the entertainment I and the rest of my generation were exposed to. Instead of Beavis & Butthead and Bart Simpson, we had Wiley Coyote and his infamous battles with the Road Runner and Woody Woodpecker and his various battles with numerous arch enemies. We also had Black Sabbath, AC/DC and other heavy metal bands. The level of violence in the old cartoons was no worse than what is portrayed today. I never heard of a call for banning the Three Stooges because they were too violent.

I would venture to say that the percentage of viewers of these so called offending materials that put in to motion an event that leads to tragic circumstances is very minute. I am not suggesting that all this violence is good. But what I am saying is, that if a parent takes the time to raise his child properly and teach his child right from wrong, then the tragic actions that a few take will not be visited upon their own doorstep.



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